IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8062 OF 2006

Dr. Nitin Panditrao Nere ...Petitioner

Versus

The Executive Director, National Board of Examinations & Anr. ... Respondents

Mr. P.N. Joshi for the petitioner.
Mr. Surel Shah for respondent No.1.
Mr. K.J. Kandpile for respondent No.2.

CORAM: **H.L. GOKHALE, Ag. C.J.,** & **V.M. KANADE, J.**

DATE: **FEBRUARY 20, 2007**.

P.C.

Heard Mr. Joshi in support of this petition. Mr. Surel Shah appears for respondent No.1. Mr. Kandpile appears for respondent No.2.

2. Rule. Rule made returnable forthwith. Respondent No.1 has already filed a reply. Respondent No.2 has not chosen to file any reply till date. The petition has been filed way back on 6th December, 2006. An ad-interim order was passed on December 7, 2006. The matter has been subsequently adjourned to 6th February, 2007, when

respondent No.2 was represented by a Counsel.

3. The petitioner is suffering from muscular dystrophy which results into progressive muscular weakness to the lower and upper limbs. In spite of this disability, he has completed his graduation in Medicine. He has completed the 3rd M.B.B.S. Examination in August, 2002. Thereafter he appeared for the C.E.T. Conducted by the first respondent Board in December, 2003. The petitioner was interested to pursue Post Graduate Course in Medicine. Though the normal admission date for this course was 15th February, 2004, the petitioner was intimated that a seat is available in this course in the respondent No.2 institution only on 15th March, 2004. This is the assertion in paragraph 3 of the petition. The petitioner submitted all the necessary papers and in fact reported to respondent No.2 Institute on 15th March, 2004, where the petitioner was supposed to be registered.

4. The petitioner very fairly states in paragraph 3 of the petition that some other formalities of giving some supporting documents took time and, therefore, he was ultimately registered by respondent No.2 on 17th March, 2004. Now the Rules require the petitioner to complete three years of registration before he can give the final examination of

the Board. For this examination, he has to complete three years on the date of the examination. The candidates are supposed to complete three years tenure on 15th March, 2007. All the students have to give such a certificate of completion of training. This is the requirement stipulated in clause 4.1 of the prospectus issued by the first respondent Board. It is for this reason that the petitioner is being denied right to appear for the examination.

5. On coming to know of this requirement, the petitioner filed this petition on 6th December, 2006, and by way of ad-interim order passed in terms of prayer clause (c) of the petition, he was permitted to give the written examination which was to be held on 9th and 10th December, 2006. According to the learned counsel for the petitioner, the papers for the practical examination are to be submitted on or before 23rd February, 2007.

6. Mr. Joshi, learned counsel for the petitioner, submits that this is a situation which has arisen for circumstances beyond the control of the petitioner. He has been suffering from serious ailment. In spite of the same, he completed his M.B.B.S. Examination and submitted his papers in time on 15th March, 2004. But the authorities of the second

respondent took few days and eventually he was registered on 17th March, 2004. The petitioner should not be made to suffer on this count.

7. Mr. Kandpile, learned counsel appearing for respondent No.2 submitted that though there was no denial to the averments made in paragraph 3 of the petition, the fact remains that some of the supporting documents were given on 17th March, 2004, as stated by the petitioner himself and, therefore, he was registered on 17th March, 2004, and thus there is a shortfall. Mr. Shah, learned counsel appearing for the first respondent Board submitted that if any relaxation is to be granted in this manner, some more people will have to be granted relaxation.

8. We have noted the submissions of all the counsel. In our view, this is a case where the petitioner cannot be made to suffer for the situation which has arisen. As stated earlier, he is suffering from a serious ailment. He did submit his application and papers and reported on 15th March, 2004, to the second respondent, as stated in paragraph 3 of the petition, which is not denied. Some of the other formalities took time and, therefore, he came to be registered on 17th March, 2004.

9. A somewhat similar situation came up before the Supreme

Court in *Dolly Chhanda* vs. *Chairman, JEE and others*, AIR 2004 SC 5043, where the question was with respect to submitting the requisite eligibility documents. The Apex Court observed that there can be some relaxation in the matter of submission of proof and rigid principles should not be applied in such manner. The Court observed thus:-

> "*Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principles as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature*".

Applying the said dicta, in our view, the petitioner will have to be deemed to have registered on 15th March, 2004. He will, therefore, be treated as completed his three years on 15th March, 2004.

10. In the circumstances, we allow this petition in terms of prayer clause (b) and he will be permitted to appear for the practicals and his results will be declared in due course. Rule is made absolute with no order as to costs.

ACTING CHIEF JUSTICE

V.M. KANADE, J.